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Attorneys for Plaintiff
Metal Jeans, Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

METAL JEANS, INC., a Nevada) CASE NO.:
corporation,)
Plaintiffs,)
) COMPLAINT FOR:
v.) 1. TRADEMARK INFRINGEMENT
) 2. FEDERAL UNFAIR COMPETITION
ANO VELI SAMUEL TURTIAINEN,) AND FALSE DESIGNATION OF ORIGIN
an Individual; and DOES 1) 3. TRADEMARK INFRINGEMENT
through 50, Inclusive,) 4. TRADE NAME INFRINGEMENT
) 5. UNFAIR COMPETITION
Defendants.) 6. DECLARATORY RELIEF
_____)	
	DEMAND FOR JURY TRIAL

Plaintiff METAL JEANS, INC. hereby alleges:

1. This is an action by plaintiff Metal Jeans, Inc. ("Plaintiff"), for damages, injunctive relief, and attorneys' fees for defendant's willful misappropriation of and damage to Plaintiff's registered trademark, "Metal®."

2. Plaintiff is the registrant of the registered trademark, Metal® (the "Metal Jeans Mark"), under Serial Number 77653054 and Registration Number 4299652. Plaintiff acquired the right, title and interest in the Metal Jeans Mark from its related entity Topolewski America, Inc., who obtained a prior registered trademark for the Metal® mark

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1 under Serial Number 74643750 and Registration Number
2 2294572. Plaintiff, through the rights it acquired from
3 Topolewski America, Inc., has been selling goods under the
4 Metal Jeans Mark in commerce throughout the United States
5 since 1990.

6 3. Defendant ANO VELI SAMUEL TURTIAINEN ("Turtiainen")
7 is improperly seeking to benefit from Plaintiff's
8 substantial investment in the Metal Jeans Mark by selling
9 clothing under the offensive marks, "GOMETAL.COM, GOMETAL®
10 and "Metal®" under Serial Number 85605179 (the "Turtianinen
11 Mark"). Turtianinen seeks to trade off of the reputation the
12 Metal Jeans Mark has come to enjoy among consumers and
13 consumers are being misled and confused. This action seeks
14 damages for the harm Defendants have caused.

15 16 THE PARTIES

17 4. Plaintiff METAL JEANS, INC. ("Metal Jeans") is, and
18 at all times relevant herein, was a corporation validly
19 formed and existing under the laws of the State of Nevada.
20 Metal Jeans is qualified to do business and doing business
21 within the State of California with its principal place of
22 business in the California.

23 5. Plaintiff is informed and believe and on that
24 basis alleges that Defendant Turtianinen is, and at all
25 times relevant herein, was an individual and was doing
26 business within the State of California.

27 6. Plaintiff is unaware of the true identity and
28 capacity of each of the defendants named herein as Does 1

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1 through 50, inclusive. Plaintiff will seek to amend this
2 Complaint to state the names and capacities of said Doe
3 defendants when ascertained. Plaintiff is informed and
4 believe and on that basis allege that each of said Doe
5 defendants was responsible for and contributed to the acts
6 hereinafter alleged and that Plaintiff's damages were
7 proximately caused by the acts and omissions of said
8 fictitious defendants.

9 7. Plaintiff is informed and believe and on that
10 basis allege that, in engaging in the acts hereinafter
11 alleged, each of the defendants was the agent, servant and
12 employee of each of the other defendants, and performed each
13 of the acts hereinafter alleged within the course and scope
14 of such agency and employment and with the knowledge,
15 consent, approval, authorization and ratification of each
16 other defendant.

17 **JURISDICTION AND VENUE**

18 8. Subject matter jurisdiction over the claims
19 asserted in this Complaint is based upon: (i) 28 U.S.C. §§
20 1331 and 1338(a) as an action arising under the Lanham Act,
21 15 U.S.C. §§ 1051 et. seq.; and (ii) 28 U.S.C. § 1332(a) as
22 an action between citizens of different states where the
23 matter in controversy exceeds the sum or value of \$75,000,
24 exclusive of interest and costs. Subject matter jurisdiction
25 over those of Plaintiff's claims that arise under state law
26 is based upon the principles of supplemental jurisdiction
27 set forth in 28 U.S.C. § 1367, and the provisions of 28
28 U.S.C. § 1338(b) as an action asserting a claim for unfair

1 competition joined with a substantial and related claim
2 under the trademark laws.

3
4 **BACKGROUND**

5
6 9. Plaintiff has been selling clothing and related
7 accessories under the Metal Jeans Mark for in excess of 20
8 years. The Metal Jeans Mark is the subject of a federally
9 registered trademark issued by the United States Patent and
10 Trademark Office.

11 10. Plaintiff has spent substantial time, effort and
12 money advertising and promoting the Metal Jeans Mark
13 throughout the United States.

14 11. Defendant Turtianinen has sought improperly to
15 capitalize on Plaintiff's investment in the creation and
16 positive reputation of the Metal Jeans Mark. Specifically,
17 Defendant Turtianinen manufactures and sells clothing under
18 the name Turtianinen Mark which is so similar to Plaintiff's
19 Metal Jeans Mark that consumers who hear, read or see the
20 Turtianinen Mark name will instantly think of Plaintiff's
21 Metal Jeans Mark.

22 12. Defendant Turtianinen is using the Turtianinen
23 Mark with the intent and purpose of trading off of the
24 goodwill that Plaintiff's Metal Jeans Mark currently enjoys
25 and/or misleading and confusing consumers. As a result,
26 Plaintiff's reputation is being tarnished and the value and
27 distinctiveness of Plaintiff's Metal Jeans Mark is being
28 diminished. Plaintiff is informed and believe and thereupon

1 allege that, absent the intervention of this Court,
2 Defendants' illegal actions will continue, and Plaintiffs
3 and consumers will continue to be harmed.

4
5 **Count I**

6 **(TRADEMARK INFRINGEMENT under 15 U.S.C.**

7 **§ 1114(1) - against all Defendants)**
8

9 13. Plaintiff specifically re-alleges and incorporates
10 by reference each and every allegation set forth above.

11 14. The United States Patent and Trademark Office has
12 granted federal trademark registrations to Plaintiff's Metal
13 Jeans Mark. Copies of certain of these registrations are
14 attached hereto as Exhibit "A." Plaintiff owns the exclusive
15 trademark rights and privileges in and to the Plaintiff's
16 Metal Jeans Mark in the United States. Plaintiff uses the
17 Metal Jeans Mark as a designation of source and quality for
18 its goods. Plaintiff uses the registration symbol"®" on its
19 goods and in advertising associated with the Plaintiff's
20 Metal Jeans Mark.

21 15. Defendants are using a copy or colorable imitation
22 of the Plaintiff's Metal Jeans Mark in a manner that is
23 likely to confuse, deceive and/or cause mistake among
24 consumers and therefore is infringing Plaintiffs' rights in
25 their Metal Jeans Mark in violation of 15 U.S.C. § 1114(1).

26 16. Plaintiff has no adequate remedy at law for
27 Defendant's infringement of Plaintiff's Metal Jeans Mark, in
28 that: (i) the Plaintiff's Metal Jeans Mark is unique and

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1 valuable property, injury to which cannot adequately be
2 compensated by monetary damages; (ii) the damages to
3 Plaintiffs resulting from the infringement are not precisely
4 and fully ascertainable; (iii) the infringement injures and
5 threatens to continue to injure Plaintiffs' reputation and
6 goodwill; and (iv) the damage resulting to Plaintiffs from
7 Defendants' wrongful conduct, and the conduct itself, are
8 continuing, and Plaintiff would be required to bring a
9 multiplicity of suits to achieve full redress for the
10 injuries caused thereby.

11 17. Unless restrained, Defendants' infringement of the
12 Plaintiff's Metal Jeans Mark will continue to cause
13 irreparable injury to Plaintiff, both during the pendency of
14 this action and thereafter. Plaintiff is therefore entitled
15 to an order from this Court preliminarily and permanently
16 enjoining Defendants and its agents, employees and others
17 acting in concert with them, from directly or indirectly
18 infringing the Plaintiff's Metal Jeans Mark in any manner,
19 including by using any name, mark, design or logo that is
20 confusingly similar to the Plaintiff's Metal Jeans Mark in
21 connection with the sale, offer for sale, advertising, or
22 promotion of any goods or services.

23 18. Plaintiff is further entitled to recover damages
24 sustained in consequence of Defendants' wrongful conduct, in
25 an amount to be determined; to recover Defendants' profits;
26 and to recover Plaintiff's attorneys' fees and other costs
27 herein. Based upon the circumstances of the case, including
28 the willful nature of Defendants' conduct, Plaintiff is

1 further entitled to recover treble the amount found as
2 actual damages pursuant to 15 U.S.C. § 1117.

3
4 **Count II**

5 **(FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN**
6 **under 15 U.S.C. § 1125(a) - against all Defendants)**

7
8 19. Plaintiff specifically re-alleges and incorporates
9 by reference each and every allegation set forth above.

10 20. The acts of Defendants alleged herein, including
11 its Turtiainen Mark, are likely to cause confusion, or to
12 cause mistake, or to deceive as to the affiliation,
13 connection, or association of Defendants or Defendants'
14 products with Plaintiff's, or as to the sponsorship, or
15 approval of Defendants' goods, services or commercial
16 activities by Plaintiffs. Defendants' actions further
17 misrepresent the nature, characteristics or qualities of
18 Defendants' goods, services or commercial activities.

19 21. Plaintiff has no adequate remedy at law for the
20 foregoing wrongful conduct of Defendants, in that: (i)
21 Defendants' actions damage and threaten to continue to
22 damage Plaintiffs' unique and valuable property, injury to
23 which cannot adequately be compensated by monetary damages;
24 (ii) the damages to Plaintiffs from Defendants' wrongful
25 actions are not precisely and fully ascertainable; (iii) the
26 wrongful acts of Defendants injure and threaten to continue
27 to injure Plaintiffs' reputation and goodwill; and (iv) the
28 damage resulting to Plaintiffs from Defendants' wrongful

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1 conduct, and the conduct itself, are continuing, and
2 Plaintiffs would be required to bring a multiplicity of
3 suits to achieve full compensation for the injuries caused
4 thereby.

5 22. Unless restrained, the foregoing wrongful acts of
6 Defendants will continue to cause irreparable injury to
7 Plaintiff, both during the pendency of this action and
8 thereafter. Plaintiff is therefore entitled to an order from
9 this Court preliminarily and permanently enjoining
10 Defendants and its agents, employees and others acting in
11 concert with them, from directly or indirectly: (i)
12 manufacturing, producing, distributing, circulating,
13 selling, offering for sale, advertising, promoting or
14 displaying any product which tends to relate or connect such
15 product in any way to Plaintiffs or to any goods or services
16 offered, provided, sold, manufactured, sponsored or approved
17 by, or connected with Plaintiffs; (ii) using any mark that
18 is confusingly similar to Plaintiff's Metal Jeans Mark;
19 and/or (iii) making any false description or representation
20 of origin concerning any goods offered for sale by
21 Defendants.

22 23. Plaintiff is further entitled to recover damages
23 sustained in consequence of Defendants' wrongful conduct, in
24 an amount to be determined, and to recover their attorneys'
25 fees and costs herein.

26 24. The confusion, mistake or deception referred to
27 herein arises out of the aforesaid acts of Defendants which
28 constitute false designation of origin and unfair

1 competition in violation of section 43(a) of the Trademark
2 Act of 1946, as amended, 15 U.S.C. § 1125(a).

3 25. Upon information and belief the aforesaid acts
4 were undertaken willfully and with the intention of causing
5 confusion, mistake or deception.

6 26. As a proximate result of the acts of Defendants
7 alleged herein, Plaintiff has suffered, is suffering and
8 will continue to suffer irreparable damage and, unless said
9 Defendants are restrained from continuing these wrongful
10 acts, the damage to Plaintiffs will increase.

11
12 **Count III**

13 **(COMMON AND STATUTORY LAW TRADEMARK**

14 **INFRINGEMENT - against all Defendants)**

15 27. Plaintiff specifically re-alleges and incorporates
16 by reference each and every allegation set forth above.

17 28. Count Three of this Complaint is based on the
18 doctrine of supplemental jurisdiction because the claim
19 asserted herein is ancillary to the federal claims set forth
20 in Counts One and Two above and arise from the same
21 transactions and a common nucleus of operative facts as
22 alleged in those Counts.

23 29. By their acts alleged herein, Defendants have
24 engaged in trademark infringement under the common and
25 statutory law of the State of California, and under
26 California Business and Professions Code § 14330, et seq.

27 30. Defendants have intentionally deceived the public
28 by misrepresenting their products are in some way sponsored

1 or authorized by Plaintiff.

2 31. Upon information and belief the aforesaid acts
3 were undertaken willfully and with the intention of causing
4 confusion, mistake or deception.

5 32. As a proximate result of the acts of Defendants
6 alleged herein, Plaintiff has suffered, are suffering and
7 will continue to suffer irreparable damage and, unless said
8 Defendants are restrained from continuing its wrongful acts,
9 the damage will be increased.

10 33. Plaintiff has no adequate remedy at law.

11
12 **Count IV**

13 **(COMMON AND STATUTORY LAW TRADE NAME**

14 **INFRINGEMENT - against all Defendants)**

15 34. Plaintiff specifically re-alleges and incorporates
16 by reference each and every allegation set forth above.

17 35. Count Four of this Complaint is based on the
18 doctrine of supplemental jurisdiction because the claim
19 asserted herein is ancillary to the federal claims set forth
20 in Counts One and Two above and arise from the same
21 transactions and a common nucleus of operative facts as
22 alleged in those.

23 36. By their acts alleged herein, Defendants have
24 engaged in trade name infringement under the common and
25 statutory law of the State of California, California
26 Business and Professions Code § 14402, et seq.

27 37. Defendants have intentionally deceived the public
28 by misrepresenting their products are in some way sponsored

1 or authorized by Plaintiff.

2 38. Upon information and belief the aforesaid acts
3 were undertaken willfully and with the intention of causing
4 confusion, mistake or deception.

5 39. As a proximate result of the acts of Defendants
6 alleged herein, Plaintiff has suffered, are suffering and
7 will continue to suffer irreparable damage and, unless said
8 Defendants are restrained from continuing its wrongful acts,
9 the damage will be increased.

10 40. Plaintiff has no adequate remedy at law.

11
12 **Count V**

13 **(COMMON AND STATUTORY LAW UNFAIR**

14 **COMPETITION - against all Defendants)**

15 41. Plaintiff specifically re-alleges and incorporates
16 by reference each and every allegation set forth above.

17 42. Count Five of this Complaint is based on the
18 doctrine of supplemental jurisdiction because the claim
19 asserted herein is ancillary to the federal claims set forth
20 in Counts One and Two above and arise from the same
21 transactions and a common nucleus of operative facts as
22 alleged in those Counts.

23 43. By their acts alleged herein, Defendants have
24 engaged in unfair competition under the common and statutory
25 law of the State of California, California Business and
26 Professions Code § 17200, et seq

27 44. Defendants have intentionally deceived the public
28 by misrepresenting their products are in some way sponsored

1 or authorized by Plaintiff.

2 45. Upon information and belief the aforesaid acts
3 were undertaken willfully and with the intention of causing
4 confusion, mistake or deception.

5 46. As a proximate result of the acts of Defendants
6 alleged herein, Plaintiff has suffered, are suffering and
7 will continue to suffer irreparable damage and, unless said
8 Defendants are restrained from continuing its wrongful acts,
9 the damage will be increased.

10 47. Plaintiff has no adequate remedy at law.

11
12 **Count VI**

13 **(DECLARATORY RELIEF - against all Defendants)**
14

15 48. Plaintiff specifically re-alleges and incorporates
16 by reference each and every allegation set forth above.

17 49. An actual controversy has arisen and now exists
18 between Plaintiff and Defendants in that Plaintiff contend,
19 and Defendants deny, that Defendants infringed on
20 Plaintiff's Metal Jeans Mark.

21 50. Plaintiff desires a judicial determination of this
22 issue.

23 51. Such a declaration is necessary and appropriate at
24 this time in order that Plaintiffs may ascertain his rights
25 to compensation and proceed with challenging the federal
26 registration of Defendants' infringing marks.

27 ///
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JURY DEMAND

52. Pursuant to Fed. R. Civ. P. 38(b), Plaintiff METAL JEANS, INC. hereby demand trial by jury of all issues so triable that are raised herein or which hereinafter may be raised in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

ON THE FIRST CAUSE OF ACTION

1. That Defendants, their officers, agents, servants, employees and representatives and all other persons, firms or corporations in active concert or participation with them be, be preliminarily and thereafter permanently enjoined and restrained from:

a. using in any manner the Metal® trademark, and any other term or terms likely to cause confusion therewith;

b. using in any manner the Metal® trademark in connection with the Defendants' goods or services in such a manner that is likely to create the erroneous belief that said goods or services are authorized by, sponsored by, licensed by or are in some way associated with Plaintiff;

c. disseminating, using or distributing on any advertising, Internet code words or titles, any other promotional materials whose appearance so resembles Plaintiff's intellectual property as to create

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1 likelihood of confusion, mistake or deception; and

2 2. That Defendants, pursuant to 15 U.S.C. § 1118, be
3 ordered to deliver up for destruction all media, packages,
4 wrappers, receptacles, and articles in their possession
5 bearing the Metal® mark, or any reproduction, counterfeit,
6 copy, or colorable imitation thereof, and all plates, molds,
7 matrices, and other means of making the same;

8 3. That Defendants account for and pay over to
9 Plaintiff all of the profits realized by Defendants, or
10 others acting in concert or participation with Defendants,
11 from the sale and distribution of their products in
12 connection with the unauthorized use of the Turtiainen mark
13 or Plaintiff's Metal® mark, or any reproduction,
14 counterfeit, copy, or colorable imitation thereof, and all
15 plates, molds, matrices, and other means of making the same;

16 4. That Plaintiff recover its damages sustained as a
17 result of Defendants' unfair competition and infringement of
18 Plaintiff's mark;

19 5. That Plaintiff be awarded treble damages together
20 with its reasonable attorneys' fees pursuant to 15 U.S.C. §
21 1117;

22 6. That Plaintiffs be awarded exemplary and punitive
23 damages as may be permitted by law or in the discretion of
24 the Court;

25 7. That Plaintiff recover the costs of this action;
26 and

27 8. That Plaintiff be granted such other and further
28 relief as the Court deems just and proper.

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Dated: November 13, 2015

JAHMARKT & ASSOCIATES

By: JOHN JAHMARKT
JOHN JAHMARKT
Attorney for Metal
Jeans, Inc.